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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 SAMUEL MERROW,

11 Plaintiff,

12 v.

13 DEPARTMENT OF CORRECTIONS, et al

14 Defendants.

CASE NO. C11-5883-BHS-JRC

ORDER DIRECTING PLAINTIFF
TO FILE AN AMENDED
COMPLAINT

15 This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate
16 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1,
17 MJR 3, and MJR 4. Plaintiff names the Department of Corrections, The Screening Reception
18 Diagnostic Center, and the Associated Medical and PREA Screening Department Agents as
19 defendants in this action (ECF No. 1).


20 In order to state a claim pursuant to 42 U.S.C. § 1983, a complaint must allege that: (1)
21 the conduct complained of was committed by a person acting under color of state law; and (2)
22 the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or
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1 laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other*
2 *grounds*, Daniels v. Williams, 474 U.S. 327 (1986).

3 Neither Department of Corrections nor the other named defendants in this action are a
4 “person” within the meaning of the Civil Rights Act. Will v. Michigan Dept. of State Police,
5 491 U.S. 58 (1989); see also Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam); Hale v.
6 Arizona, 993 F.2d 1387, 1399 (9th Cir. 1993). State officials sued in their official capacity for
7 damages are not “persons” for purposes of Section 1983. See Arizonians for Official English v.
8 Arizona, 520 U.S. 43, 69 n.24 (1997) (*citing* Will v. Michigan Dept. of State Police, 491 U.S. at
9 71, 71 n.10); Hafer v. Melo, 502 U.S. 21, 27 (1991).

10 The proposed complaint is deficient because plaintiff fails to name a person who can be
11 served as a defendant. Plaintiff is ordered to file an amended complaint curing this defect on or
12 before December 30, 2011. The amended complaint will act as a complete substitute for the
13 original. Failure to timely file the amended complaint or the filing of a complaint that does not
14 cure the defect will result in a Report and Recommendation that this action be dismissed.

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16 Dated this 29th day of November, 2011.

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20 J. Richard Creatura
21 United States Magistrate Judge
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